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Insurance—Foreign Life Insurer Licensed in State May Control Insurance Firms Engaged in Non-Life Business

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to make a thorough investigation, and that the ultimate beneficiary will not be the wrongdoer but will be the innocent victim.

The *O'Connor* case, as it effects an insurer's right to rescind under the Assigned Risk Plan, is really moot because Section 313 of the Vehicle and Traffic Law is all inclusive.[8] Therefore, it clearly supersedes the promulgations of the Superintendent of Insurance to the extent that they provide for cancellation. However, the *O'Connor* case is indicative of the present Court of Appeal's thinking on an insurer's right to rescind for fraud once an innocent third party has been injured by the insured. New Jersey and other jurisdictions have arrived at the same position under their Financial Responsibility Acts.[9]

A recent case in the Appellate Division, *Tetter v. Allstate Insurance Company*, held that the notice required in Section 313 of the Vehicle and Traffic Law had abolished the insurer's common law right to rescission *ab initio*, even though there was no injury to an innocent third party.[10] The court reasoned that to allow rescission *ab initio* would, one, make it impossible for the insured to comply with the statute (insured is required to have continuous coverage), and two, render him retroactively guilty of a misdemeanor (operating a motor vehicle without insurance coverage).

It would appear that the determining factor in this area is the fear that innocent victims of auto accidents may suffer. Although the *Tetter* case did not involve an innocent victim, to reverse the case on appeal the Court of Appeals would have to decide that the right to rescind was defeated only when an innocent third party was involved, and to indicate that his prior acts were lawful. To reverse, therefore, would require a strained interpretation of the statute. These two cases should give the insurance companies writing automobile liability insurance clear notice that once they issue the FS-1 form the only way they can terminate is by complying with the statute. This burden (prior investigation before issuance of the policy) imposed on the insurance companies is far down the scale of values when compared with the benefits to innocent victims and society as a whole.

R. E. N.

FOREIGN LIFE INSURER LICENSED IN STATE MAY CONTROL INSURANCE FIRMS ENGAGED IN NON-LIFE BUSINESS

In *Conn. Gen. Life Ins. Co. v. Superintendent of Ins.*, the Court of Appeals held that an out-of-state *life* insurance company licensed in New York can gain control of another company which deals in fire and casualty insurance and still maintain the privilege of issuing life insurance in New York.[11]

8. N.Y. Vehicle and Traffic Law § 313:
. . . every insurance policy for which a certificate of insurance (FS-1 form) has been issued.
9. Atlantic Casualty Insurance Company v. Bingham, 10 N.J. 460, 92 A.2d 1 1952; see also Annot., 171 A.L.R. 550 (1947) and 34 A.L.R.2d 1297 (1954).
10. 9 A.D.2d 176, 192 N.Y.S.2d 610 (4th Dep't 1959).
11. 10 N.Y.2d 42, 217 N.Y.S.2d 39 (1961).

The plaintiff, an out-of-state insurance company contemplating such an acquisition, brought an action for a declaratory judgment on this issue. The Superintendent of Insurance had previously informed the plaintiff that such a transaction was forbidden by New York law. Following the passage of an amendment to Section 90(1) of the Insurance Law in 1958, the Superintendent issued a regulation to this effect.[12] The Supreme Court dismissed the plaintiff's motion and this ruling was affirmed by the Appellate Division.[13]

The Court of Appeals, reversing these decisions and granting the declaratory judgment in favor of the plaintiff, ruled that Section 42(3) and Section 193(2) of the Insurance Law do prohibit out-of-state life insurance companies from *issuing* fire or casualty insurance, but these laws do not prohibit control of another firm doing such business.[14] The Court maintained that the only test used to determine whether such a purchase is permissible is based on the measure of the foreign firm's admitted assets. Since the plaintiff can pass this test created by Section 90(1), they concluded it can acquire control of the other firm and continue to issue life insurance.[15] This conclusion was reached by strictly interpreting the pertinent statutes and by relying on past decisions holding that the business of a subsidiary corporation cannot be considered the business of the parent.[16] The majority bolstered their conclusion by thoroughly reviewing the history of New York law in this area. They pointed out that under previously existing laws both Aetna and Travelers, out-of-state life insurance companies licensed in New York, were allowed to purchase controlling interest in fire and casualty companies and these arrangements have been allowed to continue in existence with no harmful results.

12. N.Y. Sess. Laws 1958, ch. 981.

13. 24 Misc. 2d 927, 200 N.Y.S.2d 909 (Sup. Ct. 1960); 11 A.D.2d 403, 207 N.Y.S.2d 335 (1st Dep't 1960).

14. N.Y. Ins. Law § 42(3):

No foreign insurer shall be licensed to do in this state any kind of insurance business, or combination of kinds of insurance business, which are not permitted to be done by domestic insurers hereafter to be licensed under the provisions of this chapter.

N.Y. Ins. Law § 193(2):

No alien life insurance company licensed to do a life insurance business in this state shall, within the United States, and no foreign life insurance company licensed to do business in this state shall, except as stated in subsection six of section forty-two, within or without this state, do any kind or kinds of business other than those specified in paragraphs one, two, and three of section forty-six.

15. N.Y. Ins. Law § 90(1):

. . . For the purposes of this subsection, the investments of a foreign insurer shall be deemed to comply in substance with the investment requirements and limitations imposed by this chapter upon like domestic insurers hereafter organized to do the same kind or kinds of insurance business if, after disallowing as admitted assets in whole or in part any of its investments which do not comply with such investment requirements and limitations, the superintendent finds that the resulting surplus to policyholders of such foreign insurer would not be reduced below an amount which is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs; but in no event below an amount equal to the minimum surplus to policyholders required on organization of a domestic insurer to do the same kind or kinds of insurance business. . . .

16. People v. American Bell Tel. Co., 117 N.Y. 241, 22 N.E. 1057 (1899); Light & Power Installation Co. v. Kelsey, 101 App. Div. 205, 91 N.Y. Supp. 709 (3d Dep't 1905).

The majority decided that if an out-of-state firm can prove its financial stability by passing the test created by Section 90(1), then the holders of life insurance policies with the out-of-state firm are adequately protected even if that firm takes on the risk of financially backing a company which deals in the generally unstable area of fire and casualty insurance.

The dissent, liberally interpreting the pertinent statutes and reasoning that allowing an out-of-state life insurance company to control a fire and casualty insurance company would place a holder of a life insurance policy with the out-of-state firm in as great jeopardy as if the out-of-state firm issued the comparatively risky fire and casualty insurance itself, concluded that such a transaction should not be allowed. The dissent reasoned that Section 90(3) which states: "Nothing in this section shall be construed to relieve any foreign or alien insurer from compliance with any other provision of this chapter," invalidates the majority's theory that only one test is used to determine if such a purchase is permissible. Their position is that Section 90 was amended only to change the procedure of valuing an out-of-state company's assets, and the amendment did not alter the prohibitions of Sections 42 and 193 which the dissent contended, forbids a foreign life insurer from entering into the fire and casualty field.

R. D. S.

LABOR LAW

Courts Lack Jurisdiction Over Dispute "Arguably Subject" to NLRB Until NLRB Declines Jurisdiction

The Labor Management Relations Act gives the National Labor Relations Board jurisdiction over labor disputes involving the owners of American registered ships, crew members, and labor unions.[1] This means that the rigid regulations governing ships of American registry must be complied with even if the ships do little domestic trade.[2] To escape these regulations, American owners have registered their ships in foreign countries such as Liberia, where regulations are minimal. In the past, the NLRB has asserted jurisdiction over American-owned ships with foreign registry where there was a fair amount of domestic trade involved, even though the crew was largely foreign.[3] "When an activity is arguably subject to Section 7 or Section 8 of the Act, the state as well as federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."[4] In such cases, where the NLRB may or may not have

1. 29 U.S.C. § 141 (1958).
2. Lauritzen v. Larsen, 345 U.S. 571 (1953).
3. Peninsular & Occidental S.S. Co., 42 LRRM 1269 (1961).
4. San Diego Building Trades Council Unions v. Garmon, 359 U.S. 236, 245 (1959).